

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MONTCLAIR PLANNED DEVELOPMENT  
PHASE I**

*SECTION 24, T3, R8*

THIS DECLARATION, made on the date hereinafter set forth by Montclair Development Group, LLC a Mississippi Corporation, hereinafter referred to as "Declarant," and

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of DeSoto, State of Mississippi, as shown on the plat and recorded in Book 102, Page(s) 27 in the Chancery County Clerks Office of Desoto County; more particularly described in Exhibit "A," which Exhibit is attached hereto and incorporated herein by reference ("Site/Property").

NOW, THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all Parties having any right, title and interest in the described Property or any part thereof their heirs successors and assigns and shall inure to the benefit of each Owner thereof.

**Article 1 Definitions**

1.01 "Association shall mean and refer to Montclair Homeowners Association, Inc., a Mississippi non-profit corporation, its successors or assigns, which Association shall have as its members all of the Owners of Lots within the Property which shall be responsible for the care, management and supervision of the Common Areas, if any, within the Property.

1.02 "By-law" shall mean and refer to the By-laws of Montclair Homeowners Association, Inc., and as the same may be amended from time to time.

1.03 "Common Area" shall mean all real property (including the walking trails and improvements thereto), if any, owned by the Association for the common use and enjoyment of the Owners.

1.04 "Declarant" shall mean and refer to Montclair Development Group, LLC, its related companies, specific successors and assigns as designated in a document placed on record in the Chancery County Clerk's Office of DeSoto County, which designates such successors and assigns as the party or parties succeeding to the rights of the Declarant hereunder. For the purposes of Montclair Subdivision, Phase 1.

1.05 "Lot" shall mean and refer to any plot of land designated for the development of a single-family residence as shown upon any plat recorded or to be recorded, subdividing the Property or any staged development.

1.06 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

City of Hernando  
495 West Commerce St (Attn: Angie)  
Hernando

1.07 "Property" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association as hereinafter provided.

1.08 "Subdivided" shall mean and refer to only portion of the Properties described in a plat of subdivision filed on record in the Chancery Clerk's Office, DeSoto County, Mississippi.

1.09 "Design Review Guideline" (DRG) or "Design Review Process" shall mean the process each lot owner must complete prior to construction on any lot in the Subdivision. The DRG may be modified or changed from time to time by the developer or by the Architectural Committee with written consent of the developer. It shall be the responsibility of each lot owner to obtain and comply with the current versions of the Design Review Guideline and provide the same to subsequent purchasers.

1.10 "Architectural Committee" or "Design Review Committee" shall mean and refer to the individual or individuals appointed to review and approve any and all construction activities on any lot in the Subdivision.

## **Article 2 Property Rights**

2.01 Owner's Easement of Enjoyment. Every owner shall have a right and easement of ingress and egress and enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to charge reasonable fees for the maintenance, repair or reconstruction upon the Common Area, if any, which the Association may acquire,
- b. The Common Area, if any, cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Lot Owners and approval of the City of Hernando Planning Commission. If acquired, such Common Areas shall be free and clear of all encumbrances,
- c. The right of the Association to adopt rules and regulations for the benefit of the Owners respecting use of the Common Area.

### **Article 3 Membership and Voting Rights**

3.01 Every Owner of a Lot shall automatically be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. There shall be one Homeowners Association for all phases of Montclair.

3.02 The Association shall have two (2) Classes of voting memberships:

a. Class A: Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

b. Class B: The Class B member shall be the Declarant and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and become converted to a Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) 95% of the lots are deeded to homeowners or December 31, 2020, whichever occurs first.

3.03 No individual or legal entity holding title to a Lot as security for any debt or obligation shall be considered as owner of such Lot, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any question or matter affecting the administration of the Association, except as otherwise provided herein.

3.04 At every meeting of the Owners, each of the Owners shall have the right to cast his vote on each question. The vote of the Owners representing fifty-one percent (51%) majority of the total votes cast with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of the stature or the Corporate Charter, or this Declaration, or the by-laws, a different vote is required, in which case such express provisions shall govern and control.

### **Article 4 Covenant for Maintenance Assessments**

4.01 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Property, hereby covenants, and each owner of any Lot by acceptance or a deed therefore, whether or not it shall be so expressed in such deed, and except as hereinafter provided, is deemed to covenant and agree to pay to the Association: 1) annual assessments or charges, and 2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together

with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Lots owned by the Declarant, its assigns, for sale and for so long as said property remains unoccupied, are excluded from the payment of assessments.

**4.02 Purpose of Assessments:** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Property, and (or the improvement, periodic maintenance, repair and replacement of improvements to the Common Areas, if any, and any reserves necessary and proper for such purposes.)

**4.03 Maximum Annual Assessment:** Until January 1<sup>st</sup> of the year immediately following the recording of this Declaration in the DeSoto County, Mississippi Chancery Court Clerk's Office, the maximum annual assessment for Class A Owners shall be \$1,200.00 per Lot.

a. From and after January 1<sup>st</sup>, of the year immediately following said recording, the maximum annual assessment may be increased each year by not more than ten percent(10%) above the maximum assessment for the previous year without a vote of each class or the membership.

b. From and after January 1<sup>st</sup> of the year immediately following the said recordation, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class or members who are voting in person or by proxy, at a meeting duly called for this Purpose.

c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**4.04 Special Assessments for Capital Improvements:** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, if any including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this Purpose.

**4.05 Notice and Quorums for Any Action Authorized Under Section 4.03 and 4.04:** Written notice of any meeting called for the purpose of taking action authorized under Sections 4.03 or 4.04 shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of either class of membership shall constitute a quorum. If the quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**4.06 Uniform Rate of Assessment:** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or annual basis.

**4.07 Date of Commencement or Annual Assessments Due Date:** The annual assessments provided for herein shall commence as to each Lot commencing on the day an Owner accepts a deed therefore, unless provided in Section 4.01. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as the date of its issuance.

**4.08 Effect of Nonpayment of Assessments – Remedies of the Association:** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at any rate set by the Association, not to exceed the maximum interest permitted under Mississippi Law. The Association may bring an action at law against the Owner to collect the assessment or foreclose the lien against the property and the interest; costs and reasonable attorney's fees for the assessments provided for herein by non-use and Common Area, if any, or abandonment of his Lot. The Owner of a Lot on which there are delinquent assessments shall not be permitted to participate or vote in any meeting of the Association. Mortgages are not required to collect any assessments and further, failure to pay assessments shall not constitute a default under an insured mortgage.

**4.09 Subordination of the Lien to Mortgages:** The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment of the lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien or such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

**4.10 Capitalization Fee:** Each lot may be assessed at the closing of each house a capitalization fee of \$500. This fee shall be a one-time charge at the first closing of the house.

## **Article 5 Covenants and Restrictions for Building Improvements**

An Architectural Committee is hereby established for all lots and parcels within the Property. The initial Committee shall consist of the designees of the Declarant. These individuals shall serve for a period of three (3) years unless they resign from the Committee by written notice to the Declarant or Board of Directors of the Association. Upon the expiration of three (3) years from the date hereof, or the earlier resignation of the above-referenced designees, the Board of Directors of the Association shall then appoint the unfilled positions on the Architectural Committee, which shall be composed of one (1) or more individual Lot Owner(s). The affirmative vote of the majority of the membership of the Architectural Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein. The Architectural Committee shall adopt Design Review Guidelines to govern construction activities within the Subdivision.

**5.01 Approvals Necessary, Rules of Committee and Remedies for Violation:** With the exception of improvements made by the Declarant, no structure of any kind or nature or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots within the Property, nor shall any existing structure, fence, or barrier upon any Lot be painted or altered in any way which materially changes the exterior appearance thereof, without the written consent of the Architectural Committee nor shall any new use be commenced on any Lot unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee, but in any event shall include:

a. A site plan of the Lot and Architectural Plan showing the nature, exterior, color scheme, kind, shape, height, materials, and location with respect to the proposed structure to be constructed upon said Lot (including proposed front, rear and side setback) of all structures, fences or barriers, and location of all parking spaces and driveways on the Lot; it will be necessary to get approval from the Architectural Control Committee prior to changing the color scheme of the structure after it is purchased.

b. Grading, soil erosion prevention and landscaping plans for the particular Lot. The Architectural Committee may promulgate the Design Review Guidelines and any rules governing the form and content of plans to be submitted for approval or requiring specific improvements on the Lots including, without limitation, the exterior lighting and planting, disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Committee at any time and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Committee to approve or

disapprove any feature or matter subject to approval or to waive the exercise of the Architectural Committee discretion as to any such matter, but no change in policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the Architectural Committee in its discretion to disapprove such plans or specifications or any features or elements included therein if such plan, specifications, features or elements are subsequently submitted for use on any other Lot. Approval of any such

plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved in any condition attached to any such approval have been adhered to and complied with in regard to all structures, fences or barriers on and uses of the Lot in question.

In the event the Architectural Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved and submitted and no further action shall be required.

If any structure, fence, landscaping barrier shall be altered, erected, placed or maintained upon any Lot contained therein or any new use commenced on any Lot otherwise than in accordance with the DRG plans and specifications approved by the Architectural Committee as required herein, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein and upon written notice from the Architectural Committee any such structure, fence, landscaping barrier so altered, erected, placed or maintained upon any Lot, in violation hereof shall be removed or re-altered, and such use shall be terminated so as to extinguish such violation.

In fifteen (15) days after the notice of such violation, the owner or owners of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or termination of same, the Association by its officers or directors shall have the right through its agents and employees to enter upon said Lot and to take such steps as may be necessary to extinguish such violation and the costs thereof shall be a binding personal obligation of such owner as well as a lien upon the Lot in question upon the recording of such with the Chancery Clerk's Office in DeSoto County, Mississippi. In addition thereto, the Association shall be entitled to levy any penalties reasonable and necessary to address any violation and shall be entitled to recover any and all attorneys fees and other expenses incurred as a result of any such violation.

Upon completion of the construction or alteration of any structure in accordance with plans and specifications approved by the Architectural Committee, the Architectural Committee shall, upon written request of the Owner thereof, issue a certificate of compliance in a form suitable for recordation, identifying such structure and the Lot on which such structure is placed and stating that the plans and specifications, location of such structure and the use or structure complies therewith. Preparation and recording of such certificate shall be at the expense of the owner or owner(s) of such Lot. Any certificate shall be conclusive evidence that all structures on the section and the use or uses described therein comply with all the requirements as to which the Architectural Committee exercises my discretionary or interpretive powers.

The Architectural Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to these restrictions payable at the time such plans and specifications are so submitted. Any agent or Declarant or the Architectural Committee may, at reasonable times, enter upon and inspect any Lot and any improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of structures thereon are in compliance with the provisions of these restrictions, and no such person shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

The Association or any owner of any Lot contained within the Planned Development shall have the right to enforce by any proceeding at law or in equity all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Lot in the Planned Development. Failure by any Owner to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

## **Article 6 Covenants and Restrictions for Use**

**6.01 Residential Use and Subdivision of a Lot:** No Lot shall be used except for private residential purposes. No Lot in the Planned Development shall be subdivided.

**6.02 Prohibited Uses Nuisances:** In order to provide for a congenial occupation of the homes within the Planned Development, and to provide for the protection of the values of the entire development, the use of the residences shall be in accordance with the following provisions:

a. Said Property is hereby restricted to residential dwellings.

(1) Lots containing approximately 30,000 or greater square feet (Estate Lots): The minimum heated square feet of a home will be 2,200 square feet, exclusive of open porches, garages and basements.

(2) Lots containing approximately 20,000 to 30,000 square feet (Mini Estate/Large Lots): The minimum heated square feet of a home will be 2,000 square feet, exclusive of open porches, garages and basements.

(3) Lots containing approximately 10,000 to 20,000 square feet (Medium/Standard Lots): The minimum heated square feet of a home will be 1,800 square feet, exclusive of open porches, garages and basements.

All buildings or structures erected upon said Property shall be of new construction, and no buildings or structures shall be moved from their locations onto said Property, and no subsequent buildings or structures of a temporary character, trailer, basement, tent, shack, garages, barn or other out building shall be used on any portion of said Property at any time as a residence either temporarily or permanently.

## **6.03 Prohibited Uses Nuisances, General:**

a. Each Lot shall be conveyed as a separately designed and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants of record in the Chancery Clerk's Office, DeSoto County, Mississippi.

b. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain, during the period or the sale of said Lots, upon such portion or the premises as Declarant deems necessary, such facilities, as in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the sale of said Lots, but without limitation, a business office, storage area, construction yard, signs, model units and sales office.

c. No advertising signage, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No business



activity of any kind whatever shall be conducted in any building or in any portion of said Property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction, sales or maintenance of any home or building, if any, of Declarant, its agents and assigns during the development and sales period of Lots in the Planned Development.

d. All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of adjoining landowners or neighboring streets. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

e. No exterior television, radio, or other antenna of any sort or any window air conditioning units shall be placed, allowed or maintained upon any portion upon the Property nor upon any structure situated upon Property without prior written approval and the authorization of the Architectural Committee.

f. Grass, weeds, vegetation and debris on each Lot shall be kept mowed and cleared at regular intervals by the Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris and plants which die shall be promptly removed from such Lots. Until a structure is constructed by an Owner, Declarant, at its option and its discretion, may mow and have dead trees, siltation, and debris removed from such Lots, Common Area, and the Owner of such Lot shall be obligated to reimburse Declarant for the cost of such work should he refuse or neglect to comply with the terms of this paragraph.

g. No obnoxious or offensive trade or activity shall be carried on upon any Lot in this Planned Development nor shall anything be done thereon which may be or become an annoyance or nuisance to the Planned Development or other Lot owners.

h. No building material of any kind or character shall be placed or stored upon any of said Lots until the Owner is ready to commence improvements. Building materials shall not be placed or stored in the Common Area, or street or between the curb and property lines, or within the drip line of any tree canopy.

i. There shall be no violation of any rules which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the by-laws authorized to adopt such rules.

j. No recreational vehicle (RV or motor home, ATV, etc.), boat, or any type trailer may be parked or stored on any Lot unless same is in a garage. All passenger automobiles shall be parked either on the driveway or in a garage. No more than four (4) automobiles per lot. No semi-truck or truck whose capacity exceeds one (1) ton or non-type trailer or flat bed trailer may be parked on any residential Lot or in the Common Areas, streets or open spaces.

k. No motor vehicle or any other vehicle, including, but not limited to, a boat, motor and boat trailer, lawn mower, tractor, etc., may be stored on any Lot for the purpose of repair of same. No A-frame or motor mount may be placed on any

Lot nor shall any disabled or inoperable vehicle be stored on any Lot. l. No storage building, shed, or other out building shall be allowed upon any Lot, unless approved by the Architectural Committee.

m. No chain link fences shall be allowed on any Lot. Wooden or ornamental iron fences will be allowed upon written approval of the Architectural Review Committee.

n. No car, truck, van, trailer, boat, recreational or commercial type vehicle shall be stored or parked on any lot, unless in a closed garage, nor parked on the streets serving the subdivision, unless engaged in transporting to or from a residence in the subdivision.

o. No motorized vehicles in common area other than maintenance vehicles. Ex: 4-wheelers, motorcycles, go carts, etc. This will be considered trespassing, and violators will be prosecuted.

p. NO animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats or other generally recognized domestic animals may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. The number of animals shall be limited to 3 animals. In all instances, household pets shall be restrained within fenced areas or under leash. No dog runs will be allowed.

q. All signs, billboards, or advertising structures of any kind are prohibited except for two (2) professional signs of not more than ten (10) square feet to advertise a lot for sale or lease during a sales period and except for signs, billboards, or advertising structure erected by or on behalf of Developer, during the development and sales period of the Developer's property and unsold Lots. No sign is permitted to be nailed or attached to trees. All signs to be approved by the Architectural Committee and the City of Hernando.

r. Garage/yard sales are not permitted without a permit from the Homeowners Association.

s. All mailboxes (numerals thereon) and the supports and encasements therefore within the subdivision are to be identical in design and will be selected by the Developer. No decorations except for holiday themes may be affixed or adhered.

t. Once a lot is sold by Developer, the owner there shall be required to construct sidewalks thereon as required by any County or Municipality or other governing authority. Should a lot owner not have installed the required sidewalk(s) for that lot within eighteen (18) months of the date of the recording of this plat, the lot owner will escrow with the Developer, such sum as is required by the Developer to ensure the future construction of the sidewalk to the extent that Developer shall be relieved of the obligation. Should the lot owner refuse to do so, then Developer shall have the right to file a lien on the property or sue for the cost of the sidewalk.

u. All driveways are to be of broom finish.

v. Swimming pools and/or hot tubs/spas and their accessory structures shall be installed in accordance with the ordinances and regulations of the City of Hernando, and are subject to review and approval of the Architectural Review Committee. No above ground swimming pools shall be permitted. w. All equipment, garbage cans, service yards, mechanical equipment, swimming pool pumps and filters, woodpiles or storage piles, shall be kept screened by adequate planting or fencing so as to conceal them from view of streets and neighbors. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

x. Developer will cause to be incorporated a non-profit homeowners association to which every party purchasing a lot, whether the original purchaser or not, will be deemed to have agreed to belong. There shall be one homeowners association for all phases of Montclair.

#### **Article 7 Insurance**

The Association shall keep all insurable improvements and fixtures of the Common Area, if any, insured against loss or damage by fire or other casualty for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable, including a policy of general liability insurance and directors and officers insurance. The Association may also insure any other property, whether real or personal, owned or maintained by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area, if any, shall be written in the name of and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

a. In the event of damage to or destruction of any part of the Common Area Improvements, if any, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs or repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against Lot Owners to cover the additional cost of repair or replacement of the property damaged or destroyed.

b. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether coverage contained in the policies is sufficient to protect the Owner and to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

#### **Article 8 Liability**

Absolute liability shall not be imposed upon Owners for damage to the Common Areas, if any or to the Lots, including improvements, of others where maintained by the Association, whether caused by themselves, their families, guests or invitees. Their liability shall only be that for which they would be legally responsible under the law of the State of Mississippi.

#### **Article 9 General Provisions**

9.01 **Enforcement**: The Declarant, the Association, the Architectural Committee, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant or the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.02 **Severability**: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

9.03 **Amendment**: The covenants and restrictions of the Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners and Declarant. Any amendment must be recorded to be effective.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION IN WHOLE OR IN PART TO CONFORM THIS DECLARATION TO THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, AND FOR THE

REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, AND FOR THE REQUIREMENTS OF ANY MORTGAGE LENDER, OR IF IN THE SOLE OPINION OF THE DECLARANT AN AMENDMENT IS REQUIRED TO INSURE THE ORDERLY DEVELOPMENT OF THE PROPERTY. ANY AMENDMENT OF THESE COVENANTS AND RESTRICTIONS BY THE DECLARANT, THE ASSOCIATION, OR ANY OWNER MUST FIRST BE APPROVED BY THE CITY OF HERNANDO PLANNING DEPARTMENT/COMMISSION.

9.04 Easements: The Declarant reserves and the Association shall be bound to convey to Declarant, or its designees, any easement requested by the Declarant for the construction, development and maintenance of any sign, amenity, or any portion of the Property, or proposed Common Areas, if any. Furthermore, if ingress or egress to any residence is through the Common Area, if any, any conveyance or encumbrance on such area is subject to that Lot Owner's easement or rights of ingress and egress.

9.05 Declarant's Reservation of Rights Respecting Use of the Properties: The Declarant shall not be obligated to improve, develop, or subdivide any part of the Properties in any specific manner or time or for any specific use, the Declarant, reserving unto itself, its heirs or assigns, all rights and privileges with respect to any portion of the Properties which it owns.

Declarant may delete from the operation of this Declaration any portion of the Properties owned by Declarant and not subdivided, or any portion of the properties owned by Declarant and within the boundaries of a recorded subdivision plat, provided that no Lots within such recorded subdivision plat have been conveyed by Declarant by warranty deed.

Montclair Development Group, LLC.

PREPARED BY:

*Denzel H. Carbine, Chief Manager*

130 SEABOARD LANE

SUITE A-9

FRANKLIN, TN

37067

N/A

~~TENNESSEE~~  
 STATE OF ~~MISSISSIPPI~~  
 COUNTY OF ~~DESOTO~~ Williamson

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this the 31<sup>st</sup> day of August, 2006, within my jurisdiction, the within named Denzel H. Carbine who acknowledged that he is the Chief Manager of Montclair Development Group, LLC., a Mississippi limited liability company, and that for and on behalf of the said limited liability company, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation to do so.

